IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 610 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARJAN DOSA & 1 - Applicant(s)

Versus

1. KESHOD GRAM PANCHAYAT & OTHERS & 8 - Opponent(s)

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Appearance :
MR MB GANDHI for Applicant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8,1.2.9 - 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4,2.2.5
MR RAJNI H MEHTA for Opponent(s) : 1 - 3,5 - 6.
RULE SERVED for Opponent(s) : 4,8 - 9.
RULE UNSERVED for Opponent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/02/2006

ORAL JUDGMENT

The present revision application is filed by Dosa Sida and Naran Sida. These petitioners (applicants) have expired and their heirs from 1/1 to 1/9 and 2/1 to 2/5

are already brought on record pursuant to orders dated 16.08.2000 and 27.10.2005 respectively.

2. The controversy involved in this revision application is interesting. It is the case of the petitioners that their ancestors, viz. Dosa Sida and Naran Sida were allotted some land by the Collector. The said allotment was a matter of litigation in Special Civil Suit No.2 of 1972 in the Court of learned Civil Judge (S.D.), Jamnagar. It is also not in dispute that the parties had taken the matter right up to the Hon'ble the Apex Court and the result was not in favour of the ancestors of the present petitioners. Thereafter, 'execution' was undertaken and in that execution, instead of defendant no.1- the State of Gujarat (Keshod Gram Panchayat) was put in possession of the land in question.

3. Mr.M.B.Gandhi, the learned advocate for the petitioners submitted that under the decree, “defendant nos.3 and 4 were directed to put defendant no.1 (i.e. State of Gujarat) for and on behalf of the villagers of village Keshod in possession of the suit land”, how the possession of the land could have been handed over to 'Keshod Gram Panchayat'. When the direction was, that defendant Nos.3 and 4 shall put defendant No.1 in

possession, may be for and on behalf of the villagers of village Keshod then the possession of the land must have been given to defendant No.1, i.e. the State of Gujarat.

4. It is not in dispute that the land in question is in possession of the 'Keshod Gram Panchayat' and it is used as, 'Gaucher land'.

5. At this stage, Mr.Gandhi, the learned advocate for the petitioners states that some persons have encroached upon the land. But then the question which is required to be considered by this Court is whether the possession of the land, which was handed over to 'Keshod Gram Panchayat' be restored to defendant no.1, viz. the State of Gujarat or not.

6. Mr.Gandhi, the learned advocate submitted that the 'execution' was defective to that extent and while curing that defect defendant nos.3 and 4 be put in possession of the land in question.

7. Mr.Gandhi, the learned advocate invited the attention of the Court to the order passed by this Court (Coram: R.C.Mankad, J.) in Civil Revision Application No.1931 of 1981 converted from First Appeal No.1680 of

1980 dated 26th February 1982. This Court was pleased to allow the revision application and order passed by the Executing Court dated 24th December 1980 below Exh.12 in Special Darkhast No.28 of 1980 was set aside. This Court was also pleased grant the petitioners' application Exh.12 and ordered to restore possession of the suit land to the petitioners.

8. Mr.Gandhi submitted that this order was never complied with. Mr.Gandhi is right. Order dated 26th February 1982 is sought to be implemented in revision application filed in the year 1990, today, in the year 2006. AT this juncture,this Court is required to take into consideration an important fact that these petitioners have no right to possess/ hold the land in question. They lost right upto the Hon'ble the Apex Court. The order passed in Civil Revision Application No.1931 of 1981 dated 26.02.1982 was on the ground of a defective execution. As submitted earlier by Mr.Gandhi the decree of the Court was that defendant Nos.3 and 4 shall hand over the possession to defendant No.1 – the State of Gujarat, which was to hold the possession of the land for and on behalf of the villagers of village Keshod.

9. Mr.Gandhi, the learned advocate submitted that the present Civil Revision Application is filed praying that this Honourable Court may be pleased to quash and set aside the order dated 8th July 1990 passed by the learned Civil Judge (SD), Jamnagar below Exhibit 22 in Special Darkhast No.28 of 1980. The learned advocate submitted that it is also prayed by the petitioners in this Civil Revision Application that the Honourable Court may be pleased to direct the executing court to forthwith restore possession of the suit land to the applicant as per the order of this Honourable Court, Annexure 'A' to this application. Annexure 'A' is the judgment and order passed by this Honourable Court (Coram: R.C. Mankad, J.) in Civil Revision Application No.1931 of 1981, which was converted from First Appeal No.1680 of 1980. He submitted that the order passed by this Court in Civil Revision Application No.1931 of 1981 is,

> “In the result, this petition is allowed. The order passed by the executing court dated 24th December 1980 below Exh.12 in Special Darkhast No.28 of 1980 is set aside. Petitioners' application, exh.12 is granted and it is ordered to restore possession of the suit land to the petitioners.”

He submitted that in view of the aforesaid order, this Court should direct Keshod Gram Panchayat to hand over possession to petitioners and not to the State of Gujarat. He submitted that possession is required to be restored back to the petitioners.

The submissions of Mr.Gandhi are found without any substance. The order in Civil Revision Application No.1931 of 1981 will stand complied with in spirit, the moment Keshod Gram Panchayat is directed to hand over possession to the State of Gujarat, through Collector, who is a representative of the State. This Court is of the opinion that once the petitioners have lost right upto the Apex Court to establish their right on the land in question, there is no reason for which this Court shall order restoration of possession of the land to the petitioners, particularly when under the original decree, it is the State of Gujarat to whom the possession is ordered to be handed over.

Mr.Gandhi, the learned advocate for the petitioners could not point out any right of the petitioners to be in possession of this land. The learned advocate could not argue against the facts on record that the allotment of

this land to these petitioners was under challenge and the petitioners had lost upto the Apex Court. Only because, instead of handing over possession of the land to the State of Gujarat, it got handed over to 'Keshod Gram Panchayat' that the Court passed an order in favour of the petitioners to restore the possession to the petitioners. In light of that, if the State of Gujarat is now put in possession, it will satisfy the original decree and the order of this Court in the aforesaid Civil Revision Application No.1931 of 1981 will also stand complied with in spirit.

10. By order dated 13th February 2006, this Court directed that the Collector, Jamnagar to remain personally present before this Court so that no more complications arise in the matter. To set right the things the Keshod Gram Panchayat duly represented by an advocate, when directed to put defendant no.1-the State of Gujarat in possession the Collector can do needful in the matter and take possession of the land.

11. At this stage, Mr.Thakker, the learned advocate representing Keshod Gram Panchayat submitted that the Keshod Gram Panchayat has already registered its request to give this land to it by an application already made.

The learned advocate is not able to produce that application as it is not readily available with him. He submitted that if some time is granted he will be able to get it from the record of the Gram Panchayat. The application is not required at this stage. The same may be accompanied with a fresh application which the Keshod Gram Panchayat is to file before the State Government to hand over the possession of the land in question for being held in the interest of **'all the village people of village Keshod'**.

This Court thinks it fit to pas the following order to serve the ends of justice.

(i)The Keshod Gram Panchayat through its Sarpanch shall hand over the possession of the land in question to the State of Gujarat, through Collector, Jamnagar.

(ii)The Collector shall take over the possession of the land after drawing necessary Panchnama, so that the decree passed in Special Civil Suit No.2 of 1972 is satisfied. That being done the objection of the learned advocate Mr.Gandhi will not survive and the direction of the Court to hand over the possession to defendant no.1-the State of

Gujarat will stand complied with.

(iii) The Collector shall process the application which is agreed to be made within two weeks from the date of the receipt of this order by the Keshod Gram Panchayat seeking the possession of the land in question and shall decide the same in accordance with law at the earliest but not later than twelve weeks from the date of receipt of the application. The Collector shall communicate its decision to the Keshod Gram Panchayat by a Registered Post A.D. Even as per the earlier order, the Collector was to hold the possession of the land in question for and on behalf of the villagers of village Keshod. This 'observation' of the Court be borne in mind by the Collector while deciding the application made to the Collector.

12. In view of the discussion and directions aforesaid, the Civil Revision Application is dismissed. Rule is discharged with no order as to costs.

(RAVI R.TRIPATHI, J.)

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